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Presentment Date: March 16, 2011  
at 12:00 pm  
Objections Due: March 16, 2011  
at 11:00 am

*Attorneys for Irving H. Picard, Esq. Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
And Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S MOTION FOR AN ORDER PURSUANT TO  
RULE 4(M) OF THE FEDERAL RULES OF CIVIL PROCEDURE  
EXTENDING THE TIME TO EFFECT SERVICE OF PROCESS**

Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS" or "Debtor") under the Securities Investor

Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”),<sup>1</sup> and as trustee for the substantively consolidated chapter 7 estate of Bernard L. Madoff (“Madoff”), by and through his undersigned counsel, hereby moves (the “Motion”) for entry of an order, pursuant to section 105(a) of title 11 of the United States, 11 U.S.C. § 10 et seq. (the “Bankruptcy Code”) and Rule 4(m) of the Federal Rules of Civil Procedure (the “Federal Rules”), as incorporated by Rule 7004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), extending the time within which he may effect service of process for certain complaints as described below, and, in support hereof, respectfully represents as follows:

#### **BACKGROUND**

1. On December 11, 2008 (the “Filing Date”),<sup>2</sup> Madoff was arrested by federal agents for violation of the criminal securities laws, including securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously, the Securities and Exchange Commission (“SEC”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”), commencing the District Court Proceeding against Madoff and BLMIS. The District Court Proceeding remains pending in the District Court. The SEC complaint alleged that Madoff and BLMIS engaged in fraud through the investment advisor activities of BLMIS.

2. On December 12, 2008, the Honorable Louis L. Stanton of the District Court entered an order which appointed Lee S. Richards, Esq. as receiver (the “Receiver”).

3. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to combining its own action with an application of the Securities Investor Protection Corporation (“SIPC”). Thereafter, pursuant to SIPA section 78eee(a)(4)(B), SIPC filed an application in the District Court alleging, *inter alia*, that BLMIS was not able to meet its

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<sup>1</sup> For convenience, future reference to SIPA will not include “15 U.S.C.”

obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA.

4. Also on December 15, 2008, Judge Stanton granted the SIPA application and entered an order pursuant to SIPA (the “Protective Decree”), which, in pertinent part:

- (a) appointed the Trustee for the liquidation of the business of the Debtor pursuant to section 78eee(b)(3) of SIPA;
- (b) appointed Baker & Hostetler, LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- (c) removed the case to the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) pursuant to section 78eee(b)(4) of SIPA.

By this Protective Decree, the Receiver was removed as receiver for BLMIS.

5. By orders dated December 23, 2008, and February 4, 2009, respectively, the Bankruptcy Court approved the Trustee’s bond and found that the Trustee was a disinterested person. Accordingly, the Trustee is duly qualified to serve and act on behalf of the BLMIS estate.

#### **RELIEF REQUESTED**

6. On or before December 11, 2010, the Trustee filed over 1,000 adversary proceedings (the “Adversary Proceedings”) seeking, *inter alia*, to avoid preferential transfers and fraudulent transfers made by the Debtor to various customers of BLMIS and other recipients of such transfers (the “Defendants”).

7. In accordance with Rule 4(a) of the Federal Rules, the Trustee has requested that a summons (the “Summons”) be issued for each complaint (“Complaint”) that was filed to initiate an Adversary Proceeding.<sup>3</sup>

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<sup>2</sup> See section 78III(7)(B) of SIPA.

<sup>3</sup> The Trustee has requested that Summons be issued for all Adversary Proceedings with Defendants with domestic service addresses only. The 120 time limit for service does not apply to service in a foreign country. Fed. R. Civ. P. 4(m).

8. Pursuant to Rule 4(m) of the Federal Rules, the Trustee has 120 days from the date of filing of the Complaint within which to serve copies of the Summons and Complaint on the Defendants named in each Adversary Proceeding.

9. Due to the volume of Complaints filed, the Clerk of the Court has not been able to issue Summons for certain of the Adversary Proceedings.

10. By this Motion, the Trustee seeks to extend the time within which the Trustee may effect service of process on the Defendants named in the Adversary Proceedings for which a Summons has not yet been issued to and including June 14, 2011 (the "Extension Request").<sup>4</sup> A list of the Adversary Proceedings for which a Summons has not been issued as of the date of this Motion is attached hereto as Exhibit A.

**BASIS FOR RELIEF REQUESTED**

11. Rule 4(m) of the Federal Rules provides:

If a defendant is not served within 120 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, *the court must extend the time for service* for an appropriate period.

Fed. R. Civ. P. 4(m) (emphasis added).

12. Good cause is determined by (1) the plaintiff's reasonable efforts to effect service, and (2) the prejudice to defendant from the delay. *National Union Fire Ins. Co. v. Barney Assocs.*, 130 F.R.D. 291, 293 (S.D.N.Y. 1990); *Muhammad v. Coughlin*, No. 1994 U.S. Dist. LEXIS 2175, at \* 11 (S.D.N.Y. Feb. 28, 1994). Particular regard should be given to whether "the plaintiff was diligent in making reasonable efforts to effect service...". *In re Motel 6 Secs. Litig.*, 1995 U.S. Dist. LEXIS 9954, \*5-6 (S.D.N.Y. July 5, 1995) (citing *Gordon v. Hunt*, 116

F.R.D. 313, 318-21 (S.D.N.Y.), aff'd, 835 F.2d 452 (2d Cir. 1987), cert. denied, 486 U.S. 1008 (1988)).

13. Courts, including courts in this circuit, interpret this rule to give them wide latitude in deciding when to grant extensions of time to serve, including permitting them to grant extensions even absent good cause. *See Gerena v. Korb*, 617 F.3d 197, 201 (2d Cir. 2010), *Zapata v. City of New York*, 502 F.3d 192, 196 (2d Cir. 2007) ("[d]istrict courts have discretion to grant extensions even in the absence of good cause."), *Savage & Assocs., P.C. v. Williams Communs. (In re Telligent Servs.)*, 372 B.R. 594, 601 (S.D.N.Y. 2007) ("The Bankruptcy Court has the discretion to extend the period for service of the complaint absent a showing of good cause.").

14. The Trustee submits that the delay in issuing the Summons provides good cause under Rule 4(m), and thus the Court respectfully must grant the Motion and provide the Extension Request. Diligent efforts to affect service will be made once the Summons are issued.

15. The Trustee further submits that there will be no prejudice to Defendants in granting the Extension Request, as a Defendant's answer date to a Complaint is calculated from the date of issuance of the summons under Bankruptcy Rule 7004(e). Thus, Defendants will be afforded the same amount of time to respond to the Complaint, regardless of whether the Complaint is served outside of the 120 day period required under Rule 4(m).

16. No prior request has been made for the relief requested herein.

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<sup>4</sup> The relief requested in this Motion is without prejudice or limitation to additional requests by the Trustee to extend the time within which the Trustee may effect service of process on the Defendants in any Adversary Proceeding upon proper application to the Court.

**NOTICE**

17. Notice of this Motion has been provided by U.S. mail, postage prepaid, or email to (i) all parties that have filed a notice of appearance in this case; (ii) SIPC; (iii) the SEC; (iv) the Internal Revenue Service; (v) the United States Attorney for the Southern District of New York; and (vi) the Defendants named in the Adversary Proceedings listed on Exhibit A attached hereto (collectively, the “Notice Parties”). The Trustee submits that no other or further notice need be given.

**WHEREFORE**, the Trustee respectfully requests that the Court (a) enter an order substantially in the form attached hereto as Exhibit B, granting the relief requested herein; and (b) grant such other and further relief to the Trustee as the Court deems proper.

Respectfully submitted,

Dated: New York, New York  
March 8, 2011

/s/ Marc Hirschfield

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*Attorneys for Irving H. Picard, Esq. Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC And Bernard L. Madoff*

**Exhibit A**

10-04317	10-04944	10-05186	10-05246	10-05342
10-04330	10-04983	10-05187	10-05248	10-05346
10-04334	10-04991	10-05188	10-05249	10-05348
10-04345	10-04992	10-05189	10-05251	10-05351
10-04360	10-04993	10-05191	10-05252	10-05355
10-04365	10-04999	10-05192	10-05253	10-05370
10-04368	10-05019	10-05193	10-05254	10-05371
10-04374	10-05022	10-05194	10-05255	10-05372
10-04375	10-05039	10-05195	10-05256	10-05373
10-04380	10-05046	10-05196	10-05257	10-05374
10-04381	10-05051	10-05197	10-05258	10-05375
10-04385	10-05053	10-05198	10-05260	10-05376
10-04386	10-05056	10-05200	10-05261	10-05377
10-04387	10-05067	10-05201	10-05262	10-05378
10-04399	10-05093	10-05202	10-05263	10-05379
10-04406	10-05101	10-05203	10-05267	10-05380
10-04420	10-05106	10-05204	10-05274	10-05382
10-04424	10-05120	10-05205	10-05275	10-05384
10-04432	10-05122	10-05206	10-05276	10-05385
10-04445	10-05123	10-05207	10-05277	10-05387
10-04446	10-05127	10-05208	10-05279	10-05388
10-04455	10-05151	10-05209	10-05281	10-05389
10-04457	10-05152	10-05211	10-05284	10-05390
10-04460	10-05154	10-05213	10-05285	10-05391
10-04463	10-05155	10-05214	10-05286	10-05393
10-04465	10-05156	10-05216	10-05288	10-05396
10-04466	10-05157	10-05217	10-05289	10-05397
10-04474	10-05159	10-05219	10-05293	10-05399
10-04476	10-05161	10-05220	10-05294	10-05401
10-04478	10-05162	10-05221	10-05295	10-05404
10-04481	10-05163	10-05222	10-05296	10-05406
10-04488	10-05166	10-05223	10-05297	10-05407
10-04491	10-05167	10-05224	10-05309	10-05408
10-04550	10-05169	10-05225	10-05310	10-05419
10-04565	10-05170	10-05226	10-05311	10-05420
10-04587	10-05171	10-05227	10-05313	10-05426
10-04635	10-05172	10-05229	10-05314	10-05429
10-04646	10-05173	10-05231	10-05318	10-05430
10-04657	10-05174	10-05232	10-05319	10-05432
10-04714	10-05175	10-05234	10-05321	10-05433
10-04760	10-05176	10-05235	10-05322	10-05434
10-04769	10-05177	10-05237	10-05323	10-05435
10-04770	10-05178	10-05238	10-05325	10-05436
10-04774	10-05179	10-05239	10-05327	10-05437
10-04781	10-05180	10-05240	10-05328	10-05439
10-04794	10-05181	10-05241	10-05330	10-05440
10-04879	10-05182	10-05242	10-05331	10-05441
10-04885	10-05183	10-05243	10-05332	10-05442
10-04910	10-05184	10-05244	10-05333	10-05443
10-04920	10-05185	10-05245	10-05336	